19-13
Affirmed.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 206.

LEWIS STOWE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 18, 1872.

ADDITION TO RECORD.—FILED JUNE 26, 1873.

SUPREME COURT OF THE UNITED STATES.

No. 206.

LEWIS STOWE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Traverse	11	6
Final judgment by the court	12	7
Application for the allowance of an appeal	13	7
Order of the court allowing same	13	7
Certificate	14	7
Addition to record	15	8
Request of claimant for findings	20	10
Findings of facts	26	12
Opinion	32	13
Clerk's certificate	36	16
Agreement of counsel	37	16

1 United States Court of Claims.

LEWIS STOWE
vs.
THE UNITED STATES. } 3053.

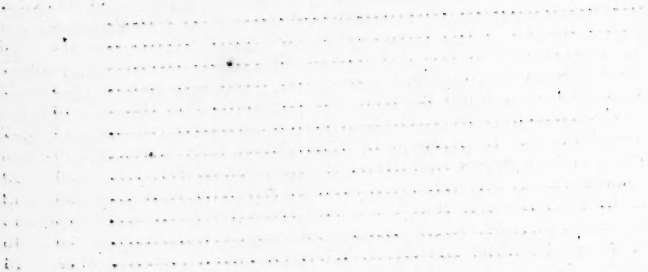
Petition.

The petition of Lewis Stowe, of Baltimore, in the State of Maryland, a citizen of the United States, who files this petition, to the use and benefit of A. M. White, of the city of Philadelphia, respectfully sheweth to your honors, by way of inducement—

That, in the month of October, A. D. 1863, your petitioner entered into a written contract with Capt. W'm Stoddard, captain and assistant quartermaster of the United States Army, to deliver to the United States, at Alexandria, Va., for the use of the Army of the United States, oats and corn, otherwise called "mixed grain," at prices agreed upon in said written agreement. That, under said agreement, he delivered, in the months of October, November, and December of that year, many millions of pounds of corn, oats, and mixed grain, which was duly accepted on said contract, and came to the use of the United States. That he was paid by the United States, from time to time, large sums of money, it being a continuous contract of delivery and payment, until the contract was fully executed and ended. That, on the tenth day of October, A. D. 1864, after the fulfillment of said contract, at the city of Washington, and the seat of Government of the United States, your petitioner, on his part, and the United States, on their part, through their duly qualified and legally empowered agents, the Third Auditor and Second Comptroller of the Treasury of the United States, for this purpose appointed by law, did account of and concerning their afore-

2 said mutual dealings, deliveries, and payments before that time had and completed between the petitioner and the defendants; and of and concerning divers sums of money, before that time, and then due, and owing, and in arrear, and unpaid from said defendants to the petitioner; and of divers quantities of grain before that time delivered by the petitioner to the defendant, and by the defendant accepted, and so came to his use; and that upon said accounting the defendant was then and there found to be in arrear, and indebted to the petitioner in the sum of one hundred and eighty-seven thousand eleven dollars and eighty-eight cents, to be paid to the plaintiff when he, the defendant, should be requested, whereby, &c.; that, afterwards, there was paid to your petitioner, on the aforesaid accounting by the United States, the sum of one hundred fifty-four thousand eight hundred fifty-six dollars and three cents, and no more, leaving a balance, still due and unpaid, of said accounting, of the sum of thirty-two thousand one hundred and fifty-four dollars eighty-five cents; which sum, though specially requested and demanded, the defendant neglects and refuses to pay; all which will more fully appear by the record and transcript of the records of the Treasury Department, duly certified, hereunto annexed, and made a part of this petition, as Exhibit A, and to the court now shown, whereby an action hath accrued to the petitioner to have and recover from the United States the unpaid balance of said accounting, the sum $32,154.85 *cents*, which sum the defendants wrongfully detain and refuse to pay to this day.

And your petitioner avers that he and the said White at all times had



1 United States Court of Claims.

LEWIS STOWE
vs.
THE UNITED STATES. } 3053.

Petition.

The petition of Lewis Stowe, of Baltimore, in the State of Maryland, a citizen of the United States, who files this petition, to the use and benefit of A. M. White, of the city of Philadelphia, respectfully sheweth to your honors, by way of inducement—

That, in the month of October, A. D. 1863, your petitioner entered into a written contract with Capt. W'm Stoddard, captain and assistant quartermaster of the United States Army, to deliver to the United States, at Alexandria, Va., for the use of the Army of the United States, oats and corn, otherwise called "mixed grain," at prices agreed upon in said written agreement. That, under said agreement, he delivered, in the months of October, November, and December of that year, many millions of pounds of corn, oats, and mixed grain, which was duly accepted on said contract, and came to the use of the United States. That he was paid by the United States, from time to time, large sums of money, it being a continuous contract of delivery and payment, until the contract was fully executed and ended. That, on the tenth day of October, A. D. 1864, after the fulfillment of said contract, at the city of Washington, and the seat of Government of the United States, your petitioner, on his part, and the United States, on their part, through their duly qualified and legally empowered agents, the Third Auditor and Second Comptroller of the Treasury of the United States, for this purpose appointed by law, did account of and concerning their afore-

2 said mutual dealings, deliveries, and payments before that time had and completed between the petitioner and the defendants; and of and concerning divers sums of money, before that time, and then due, and owing, and in arrear, and unpaid from said defendants to the petitioner; and of divers quantities of grain before that time delivered by the petitioner to the defendant, and by the defendant accepted, and so came to his use; and that upon said accounting the defendant was then and there found to be in arrear, and indebted to the petitioner in the sum of one hundred and eighty-seven thousand eleven dollars and eighty-eight cents, to be paid to the plaintiff when he, the defendant, should be requested, whereby, &c.; that, afterwards, there was paid to your petitioner, on the aforesaid accounting by the United States, the sum of one hundred fifty-four thousand eight hundred fifty-six dollars and three cents, and no more, leaving a balance, still due and unpaid, of said accounting, of the sum of thirty-two thousand one hundred and fifty-four dollars eighty-five cents; which sum, though specially requested and demanded, the defendant neglects and refuses to pay; all which will more fully appear by the record and transcript of the records of the Treasury Department, duly certified, hereunto annexed, and made a part of this petition, as Exhibit A, and to the court now shown, whereby an action hath accrued to the petitioner to have and recover from the United States the unpaid balance of said accounting, the sum $32,154.85 *cents*, which sum the defendants wrongfully detain and refuse to pay to this day.

And your petitioner avers that he and the said White at all times had

borne true allegiance to the United States; that he in nowise has given any aid or encouragement to the rebellion against the United States; that no assignment or transfer of said claim has been made otherwise than to said A. M. White, who furnished the grain delivered to the United States in the name of your petitioner; that the sum claimed is justly due from the United States, exclusive of all set-off whatever.

LEWIS STOWE,
By his attorney, T. J. D. FULLER.
P. O. Address, Washington City.

WASHINGTON CITY,
District of Columbia, ss:

JANUARY 13, 1868.

Subscribed and sworn to before me, on the day and year above written.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

3 EXHIBIT *A.*

Be it remembered that John Wilson, esq., who certified the annexed transcript, is now, and was at the time of doing so, Third Auditor of the Treasury, and that full faith and credit are due to his official attestations.

In testimony whereof I, Hugh McCulloch, Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this Department, at the city of Washington, this ninth day of January, in the year of our Lord 1868.

[L. S.] H. McCULLOCH,
Secretary of the Treasury.

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE, *January* 1868.

I certify the annexed are true copies of certain original papers on file in this office, relating to a settlement made in favor of one Louis Stowe.

JOHN WILSON, *Auditor.*

QUARTERMASTER'S DEPOT,
Alexandria, Va., October 5, 1863.

LOUIS STOWE, Esq.

DEAR SIR: Please send me a proposition for one or two hundred thousand bushels mixed grain, and the proportion of hay. If you do not get the figures too high I will take it.

Respectfully, &c.,
(Signed) W'M STODDARD,
Captain, A. Q. M.

BALTIMORE, *October* 9, 1863.

Capt. W'M STODDARD.

SIR: I hereby propose to furnish your Department with one million (1,000,000) bushels oats, of good merchantable quality, in bags, at ninety-four cents per bushel of 32 lbs.; also, five hundred thou-
4 sand bushels mixed grain, (as per instructions,) in bags, at ninety cents per bushel of 32 lbs., deliverable as fast as may be required

by your Department. This proposition to hold good for five days after the receipt of this.

These propositions to be accepted jointly.

Respectfully,

(Signed) LOUIS STOWE.

ASSISTANT QUARTERMASTER'S OFFICE,
Alexandria, Virginia, October 10, 1863.

The within proposal is accepted; payments to be made as the grain is delivered, with a reservation of (10) ten per cent. until the whole amount is delivered.

(Signed) W'M STODDARD,
Captain A. Q. M.

No. 4667.] TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE, *5th October*, 1864.

I certify that there is due from the United States to Louis Stowe, for 11,739,864 lbs. of pure oats, and 11,516,748 lbs. mixed grain, (the latter containing, by estimation, 6,513,653 lbs. corn and 5,003,095 lbs. oats,) delivered to the Quartermaster's Department at Alexandria, Virginia, in October, November, and December, 1863, under agreements made with Captain W'm Stoddard, assistant quartermaster, in October, 1863, calling for 94 cents per bushel for oats, and 90 cents per bushel of 32 lbs. for mixed grain, in the proportions of 12 lbs. corn and 20 lbs oats, per papers herewith, and report of Colonel Charles Thomas, assistant quartermaster general, of 18th July, 1864, the grain so delivered being equal to 542,804 $\frac{5}{12}$ bushels of mixed grain, containing 12 lbs. corn and 20 lbs. oats in each bushel, and 183,964 $\frac{23}{32}$ bushels of pure oats, payment whereof is now allowed in pursuance of the accompanying decision of the Second Comptroller's of 28th September, 1864, at the rate of 94 cents a bushel for the oats, and 90 cents a bushel for the mixed grain, making an aggregate of $661,450 82

From which deduct the following amount, acknowledged by claimant to have been received by him from Captain W'm Stoddard, in part payment of said oats and mixed grain 474,438 94

5 Leaving a balance in favor of claimant amounting to the sum of one hundred and eighty-seven thousand and eleven dollars and eighty-eight cents..... 187,011 88

Appropriation: Quartermaster Department.

Payable to the claimant. Present, as appears from the statement and vouchers and other papers herewith submitted.

(Signed) E. SILLS, *Auditor.*

To J. M. BRODHEAD, Esq.,
Second Comptroller.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this October 10, 1864.

(Signed) J. M. BRODHEAD,
Second Comptroller.

Issue for ($154,856.03) one hundred and fifty-four thousand eight hundred and fifty-six dollars and three cents.

(Signed) M. C. MEIGS,
Brevet Major-General, Q. M. General.

Nov. 21, 1864.

WAR DEPARTMENT, WASHINGTON CITY,
December, 24, 1867.

SIR: In the matters of the claim of Lewis Stowe, and also of the proposition made by you on the 20th instant for its adjustment by offsetting the claim of the Merchants' National Bank against Stowe, and crediting it to the claim now under consideration, I have to inform you that the whole subject has been submitted to the Secretary of War ad interim, who directs me to say that the case must be taken as closed, so far as the War Department is concerned, with the adverse decision of the Department, already known to the claimant.

Very respectfully, your obedient servant,
JA'S A. HARDIE,
Inspector General.

T. J. D. FULLER, Esq.,
Washington.

6 *Amended petition.—Filed by leave.*

United States Court of Claims.

LOUIS STOW
vs.
THE UNITED STATES. } 3053.

The petition of Louis Stow respectfully represents: That he is a citizen of the United States, resident of Baltimore, Maryland; that, in October, 1863, he entered into a written contract with William Stoddard, captain and assistant quartermaster of the United States Army, to deliver at Alexandria, Va., a quantity of mixed grain, to be composed of corn and oats, in certain specified quantities, and at a price specified in said contract; that, under and in pursuance of said contract, he delivered large quantities of said grain, which were duly accepted under said contract, to and for the use of the United States, and was paid various sums of money on account thereof, from time to time, but no final settlement was made until on the tenth (10th) day of October, eighteen hundred and sixty-four, when, after a full examination by the claimant on his part, and on the part of the United by Elijah Sells, Third Auditor, and John M. Brodhead, Second Comptroller of the United States Treasury Department, the officers appointed under authority of law for the investigation and determination of the amount, if any, due him by the United States, on account of said grain delivered under said contract as aforesaid, and the respective payments made thereon, and the state of the account as then existing between the claimant and the
7 United States, did, then and there, in pursuance of the law, declare and find that there was due to claimant on account of said grain so delivered under the contract aforesaid, the sum of one hundred and eighty-seven thousand and eleven dollars and eighty-eight cents, which was payable out of the appropriation for Quartermaster's Department. The said finding and settlement being officially signed and made of record in the offices of the Third Auditor and Second Comptroller, certified

records and transcripts whereof, from the Treasury Department, are now on file in this court, and that the said balance was duly certified by the Second Comptroller to the Secretary of War as provided by law.

Claimant further represents that, afterwards, a requisition, was issued by the Secretary of War in his favor, for one hundred and fifty-four thousand eight hundred and fifty-six dollars and three cents, on the Secretary of the Treasury, and which was duly paid to him at the Treasury, leaving a balance of thirty-two thousand one hundred and fifty-five dollars and eighty-five cents still due him, for which the Secretary of War at that time declined to draw a requisition, and, though often requested, continued to refuse.

Claimant further represents that, on the seventh day of September, eighteen hundred and sixty-eight, the Secretary of War issued a requisition on the Secretary of the Treasury for the said sum of thirty-two thousand one hundred and fifty-five dollars and eighty-five cents in favor of claimant, the same being the balance remaining due him on the said settlement made by the accounting officers of the Treasury, and that thereupon the Secretary of the Treasury issued his warrant on the Treasurer of the United States, in favor of claimant, for the said amount. Claimant states that he is informed and believes that when said warrant of the Secretary of the Treasury in his favor came before the Treasurer in due course, that a draft might be issued to claimant, or payment made,

8 application was made to the Treasurer for the appropriation or conversion of the said sum of thirty-two thousand one hundred and fifty-five dollars and eighty-five cents to the credit of the National Bank of the Metropolis, of Washington, D. C., based upon certain statements and representations that one A. M. White was the person to whom said money should be paid; that said White had advanced the money for the purchase of the grain, and that claimant had no interest in the said contract; that said A. M. White was indebted to the said National Bank of the Metropolis, which was also indebted to the United States; and claimant is informed and believes that the said sum of thirty-two thousand one hundred and fifty-five dollars and eighty-five cents has been placed to the credit of the said National Bank of the Metropolis in its account with the United States, and that although he has demanded the payment of the said warrant to him, it has been refused by the Treasurer for the reasons stated. Petitioner further represents that he never authorized any such application or conversion of the said money due him by the United States, nor any part thereof; nor had he any notice or knowledge of the said application, or of the proceedings thereunder, until some time afterwards. Claimant further states that he has never assigned or transferred his claim, or any part thereof, to the said A. M. White, or any other person. Claimant says further that it is true he did, on the 14th January, 1864, place in the hands of the said A. M. White a power of attorney in the ordinary form, leaving name of the attorney in blank, authorizing the said attorney to collect and recover moneys due and coming to him from the United States Government, under the said contract with Captain Stoddard, A. Q. M., and to receipt for the same when paid, &c. But claimant avers that said power of attorney was not intended to and does not confer any power or au-

9 thority on the said A. M. White or any attorney, further than to prosecute the said claim to settlement, and to receive any draft or check in the name of claimant for any amount that should be found due to him; being advised that the money could not be paid on said draft or check whensoever it might issue, without the endorsement of claimant, or the execution of a new power of attorney after the issue

of the requisition and draft, and describing the same and the amount thereof.

Claimant further represents that he is advised and believes that no draft for the amount specified in the requisition of the Secretary of War, and warrant of the Secretary of the Treasury, has yet been issued by the Treasurer of the United States, and that the Treasurer refuses to issue to claimant any check or draft, or to pay to him the balance due as specified therein. He further represents that he is advised and believes that said transfer, or appropriation of the said thirty-two thousand one hundred and fifty-five dollars and eighty-five cents to the credit of the National Bank of the Metropolis is unauthorized and void, and that the United States are liable for the balance remaining due him as aforesaid. Wherefore he prays the judgment of this court that the same shall be paid.

Petitioner further represents that he has at all times borne true allegiance to the Government of the United States; that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said Government.

LOUIS STOW.

HUGH L. BOND,
ROB'T J. ATKINSON.
W'M JOHNSON,
Counsel.

Louis Stow, being duly sworn, says that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly en-
10 titled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that the facts stated in said petition are true.

LOUIS STOW.

Sworn and subscribed before me this twelfth day of December, A. D. 1868.

[SEAL.] N. CALLAN,
Notary Public, Washington, D. C.

Post office address of—
Louis Stow, Baltimore, Md.
Hugh L. Bond, " "
R. J. Atkinson, Washington, D. C.
W'm Johnson, " "

11 In the United States Court of Claims, December term, A. D. 1868.

LEWIS STOWE
vs.
THE UNITED STATES. } No. 3053.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $32,155.85, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given en-

couragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney-General.

12 In the Court of Claims.

LEWIS STOWE
vs.
THE UNITED STATES. } 3053.

And now, to wit, 28th of February, A. D. 1870, the court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant's petition be dismissed.

By the court:

A true copy of record.

13 In the Court of Claims. Dec. term, 1869.

LEWIS STOWE
vs.
THE UNITED STATES. } 3053.

To the Court of Claims:

The plaintiff in this suit hereby makes application for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered in this action on the 28th day of February, 1870, in favor of the defendants, and dismissing the petition of the plaintiff, Lewis Stow.

May 23, 1870.

WILLIAM JOHNSTON,
R. J. ATKINSON,
Att'ys for Plaintiff.

Filed in clerk's office May 23, 1870.

Ordered that an appeal, as prayed, in the case of Lewis Stowe vs. The United States be allowed.

By the court.

MAY 23, 1870.

14 In the Court of Claims.

LEWIS STOWE
vs.
THE UNITED STATES. } No. 3053.

I, Sam'l H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the solicitor of the claimant for the allowance of an appeal, as filed in the clerk's office May 23d, 1870, and of the order of the court of May 23d, 1870, allowing the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 12th day of September, A. D. 1872.

[SEAL.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

(Indorsement on cover:) No. 206. Lewis Stowe, appellant, vs. The United States. Court of Claims. Filed 18th September, 1872.

15 *Amended petition.—Filed by leave.*

United States Court of Claims.

LOUIS STOW
vs.
THE UNITED STATES.

The petition of Louis Stow respectfully represents: That he is a citizen of the United States, resident of Baltimore, Maryland; that, in October, 1863, he entered into a written contract with William Stoddard, captain and assistant quartermaster of the United States Army, to deliver at Alexandria, Va., a quantity of mixed grain, to be composed of corn and oats, in certain specified quantities, and at a price specified in said contract; that, under and in pursuance of said contract, he delivered large quantities of said grain, which were duly accepted under said contract, to and for the use of the United States, and was paid various sums of money on account thereof, from time to time, but no final settlement was made until on the tenth (10th) day of October, eighteen hundred and sixty-four, when, after a full examination by the claimant on his part, and on the part of the United States by Elijah Sells, Third Auditor, and John M. Brodhead, Second Comptroller of the United States Treasury Department, the officers appointed under authority of law for the investigation and determination of the amount, if any, due him by the United States, on account of said grain delivered under said contract as aforesaid, and the respective payments made thereon, and the state of the account as then existing be-

16 tween the claimant and the United States, did then and there, in pursuance of the law, declare and find that there was due to claimant, on account of said grain so delivered under the contract aforesaid, the sum of one hundred and eighty-seven thousand and eleven dollars and eighty-eight cents, which was payable out of the appropriation for Quartermaster's Department. The said finding and settlement being officially signed and made of record in the offices of the Third Auditor and Second Comptroller, certified records and transcripts whereof, from the Treasury Department, are now on file in this court, and that the said balance was duly certified by the Second Comptroller to the Secretary of War as provided by law.

Claimant further represents that, afterwards a requisition was issued by the Secretary of War in his favor, for one hundred and fifty-four thousand eight hundred and fifty-six dollars and three cents, on the Secretary of the Treasury, and which was duly paid to him at the Treasury, leaving a balance of thirty-two thousand one hundred and fifty-five dollars and eighty-five cents still due him, for which the Secretary of War, at that time, declined to draw a requisition, and though often requested, continued to refuse.

Claimant further represents that, on the seventh day of September, eighteen hundred and sixty-eight, the Secretary of War issued a requisition on the Secretary of the Treasury for the said sum of thirty-two thousand one hundred and fifty-five dollars and eighty-five cents in favor of claimant, the same being for the balance remaining due him on the said settlement made by the accounting officers of the Treasury, and that thereupon the Secretary of the Treasury issued his warrant on the Treasurer of the United States, in favor of claimant, for the said amount. Claimant states that he is informed and believes that when said warrant of the Secretary of the Treasury, in his favor, came before

the Treasurer in due course, that a draft might be issued to
17 claimant or payment made, application was made to the Treasurer for the appropriation or conversion of the said sum of thirty-two thousand one hundred and fifty-five dollars and eighty-five cents to the credit of the National Bank of the Metropolis, of Washington, D. C., based upon certain statements and representations that one A. M. White was the person to whom said money should be paid; that said White had advanced the money for the purchase of the grain, and that claimant had no interest in the said contract; that said A. M. White was indebted to the said National Bank of the Metropolis, which was also indebted to the United States; and claimant is informed and believes that the said sum of thirty-two thousand one hundred and fifty-five dollars and eighty-five cents has been placed to the credit of the said National Bank of the Metropolis in its account with the United States, and that although he has demanded the payment of the said warrant to him, it has been refused by the Treasurer for the reasons stated. Petitioner further represents that he never authorized any such application or conversion of the said money due him by the United States, nor any part thereof, nor had he any notice or knowledge of the said application or of the proceedings thereunder until some time afterwards. Claimant further states that he has never assigned or transfer'ed his claim, or any part thereof, to the said A. M. White or any other person. Claimant says further that it is true he did, on the 14th January, 1864, place in the hands of the said A. M. White a power of attorney in the ordinary form, leaving name of the attorney in blank, authorizing the said attorney to collect and recover moneys due and coming to him from the United States Government, under the said contract with Captain Stoddard, A. Q. M., and to receipt for the same when paid, &c. But claimant avers that said power of attorney was
18 not intended to and does not confer any power or authority on the said A. M. White, or any attorney, further than to prosecute the said claim to settlement, and to receive any draft or check in the name of claimant for any amount that should be found due to him; being advised that the money could not be paid on said draft or check, whensoever it might issue, without the endorsement of claimant, or the execution of a new power of attorney after the issue of the requisition and draft, and describing the same and the amount thereof.

Claimant further represents that he is advised and believes that no draft for the amount specified in the requisition of the Secretary of War and warrant of the Secretary of the Treasury has yet been issued by the Treasurer of the United States, and that the Treasurer refuses to issue to claimant any check or draft, or to pay to him the balance due as specified therein. He further represents that he is advised and believes that said transfer or appropriation of the said thirty-two thousand one hundred and fifty-five dollars and eighty-five cents to the credit of the National Bank of the Metropolis is unauthorized and void; and that the United States are liable for the balance remaining due him, as aforesaid; wherefore he prays the judgment of this court that the same shall be paid.

Petitioner further represents that he has, at all times, borne true allegiance to the Government of the United States; that he has not, in

any way, voluntarily aided, abetted or given encouragement to the rebellion against said Government.

LOUIS STOW.

HUGH L. BOND,
ROB'T J. ATKINSON,
W'M JOHNSON,
Counsel.

Louis Stow, being duly sworn, says that no assignment or transfer of said claim, or any part thereof, or any interest therein has been made, except as in said petition stated; that said claimant is justly
19 entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that the facts stated in said petition are true.

LOUIS STOW.

Sworn and subscribed before me this twelfth day of December, A. D. 1868.

[SEAL.]

N. CALLAN,
Notary Public, Washington, D. C.

Post-office address of—
Louis Stow, Baltimore, Md.
Hugh L. Bond, " "
R. J. Atkinson, Washington, D. C.
W'm Johnson, " "

20 U. S. Court of Claims.

LOUIS STOW
vs.
THE UNITED STATES.

The counsel for claimant request the following findings of fact additional to those prepared by the court:

1st. After the words "received the purchase-money," in the first paragraph, insert "in the manner hereinafter stated."

2nd. In the 2nd paragraph, in the clause "the defendant paid to the claimant on account of moneys," after the word claimant insert the words "by draft in his favor alone."

3rd. The petition in name of claimant was not read or sworn to by him before it was filed, nor was he consulted by the attorney before bringing suit, (Fuller' dep., p. 8, X-ex.,) nor did he authorize suit to be brought, except so far as the power of attorney gave such au-
21 thority. Fuller, attorney for White, became attorney for the bank, & the bank became responsible for his fee. (Fuller' dep., p. 9.)

4th. The claimant, Stow, was not a party to the arrangement with the bank, but opposed and tried to defeat it, and made an effort to obtain the requisition himself. (Fuller dep., p. 10.)

5th. The War & Treasury Department' would not issue a requisition until the arrangement was made to pay the indebtedness of the bank to the Government. (Fuller's dep., p. 9, X-ex.)

6th. Stow claimed that, in addition to his interest in the claim, White was otherwise indebted to him. (Wilson's dep., p. 19.) Also that the

power of attorney was given to enable White to raise money in Baltimore. (Dep., p. 20.)

7th. The Government refused to pay the money to White before and after the execution of the power of attorney, and when it was known that White had an interest in the claim, the contract with Stow was
22 still recognized, and the money paid upon the power executed by Stow.

8th. Stow alone was responsible to the Government for the execution of the contract, and he did not, in any manner, so far as the evidence shows, fail to furnish the grain of the kind, quantity, and amount contracted for.

9th. At the December term, 1868, the counsel for Stow, the claimant, procured an order granting leave to amend the petition, "so far as relates to the suggestions contained therein relative to one A. M. White and his alleged interest, and also to conform to the facts as they now stand." The amended petition was filed, and, upon the hearing, was dismissed.

CONCLUSION OF LAW.

1st. The claimant, Stow, alone was known to the Government in the contract, and he alone was responsible for its fulfillment; and it
23 was not a matter of any concern to the Government how or through whom he furnished the grain, as there was no rule or regulation prescribing any particular mode or person.

2nd. The actual interest of the contractor, Stow, in the claim, or by whom the money for purchasing was furnished, or who was to share in the profit, did not affect his right alone, as the contractor, to receive the money.

3rd. The Quartermaster-General having finally concurred in the opinion of the Third Auditor and Comptroller, that the claim was just, the amount could only be paid to Stow himself, the recognized contractor, or to some one authorized by him by a power of attorney, executed as required by law. The only power executed by Stow was, under the act of February 26, 1853, void as to any transfer or assignment, and conferred upon no one the authority to receive the
24 money, and gave to the officers of the Treasury no power to pay the money to any one except Stow.

4th. As the payment under said power was a violation of the law by its own officers, it could not release the Government from its obligation and liability to pay the amount found to be due to Stow, and it is still liable to him as if said power had never been executed, and he is entitled to receive the sum of $32,155.85 found due him upon settlement.

Upon the foregoing proposed findings of the claimant are the following endorsement, by Judge Nott, to wit:

1st finding. Refused as contrary to evidence and the rule of the findings of the court.

2nd. Refused as immaterial.

25 3rd. Refused as already set forth substantially in the findings of the court. Refused as irrelevant & as evidence.

4th. Refused as against weight of evidence, except as incorporated into the findings of the court.

5th. Refused as immaterial and already appearing in the findings of the court.

6th. Refused as immaterial and irrelevant.
7th. Refused as already appearing in the findings of the court, and as immaterial.
8th. Refused as conclusions of law, and as already appearing in the findings of the court.
9th. Refused as not a finding of fact upon the issue.

CONCLUSIONS OF LAW.

1st. Refused, and the conclusions of the court substituted.

26 Court of Claims.

LOUIS STOW
vs.
THE UNITED STATES.

FINDINGS OF FACT.

This case coming on to be heard, the 12th day of January, 1870, before the chief justice & judges of the Court of Claims, the court, upon the proofs & evidence, makes the following findings of fact:

1st. In October, 1863, the officers of the Quartermaster's Department refusing to deal with one A. M. White, the claimant in his own name offered to furnish the grain mentioned in the petition, and his proposal was accepted. The claimant alone was known to the officers of the Quartermaster's Department, and all vouchers & drafts, under his agreement, were issued to him; but White purchased the grain and received the purchase-money, except in the instance hereinafter stated,
27 allowing to the claimant a commission for his services and the use of his name.

2nd. The defendants having neglected to pay a portion of the money due under the agreement, the claimant, on the 14th January, 1864, at the request of White, executed a power of attorney in blank, authorizing the blank attorney, "for me and in my name, to collect and receive any and all moneys due and coming due to me," under the said agreement; "and to make, execute, and deliver to any officer or person authorized by the Government to pay said moneys, a good and sufficient release, acquittal, or receipt for the same or any part that may be paid to my said attorneys, and generally to do any and all things necessary in the premises." This power was not executed before two witnesses, but was acknowledged before & witnessed by a notary public. Subsequent to the giving of the power of attorney, the defendants paid to the claimant, on account of moneys due under the agreement,
28 $154,856.03, which amount was paid over by the claimant to White. But, the defendants refusing to pay the balance due, as set forth in the petition, White inserted in the power of attorney the names of "Theodore M. Davis, of New York City, and Thomas J. D. Fuller, of Washington, D. C., as attorney' in fact of National Bank of Metropolis, of Washington, D. C.," and he instructed Mr. Fuller, who was an attorney of the court, to bring an action against the defendants. Mr. Fuller had no authority from the claimant to bring the suit other than the power of attorney, but brought this action against the defendants in the name of the claimant, for the use of White, by the filing of the original petition herein. Subsequently, the claimant, with knowledge of the facts, suffered the

suit so brought to proceed, & co-operated with White in the prosecution thereof.

3rd. While the action was still pending, & before the trial thereof, viz, on or about the 7th September, 1868, a settlement or compromise
29 of the cause of action was effected by White and the defendants in the manner following: The National Bank of the Metropolis being indebted to the defendants, and White being indebted to the bank, a war-warrant was drawn, on the 7th September, 1868, by the defendants' officers on the Treasurer of the United States for the balance of the claimant's account set forth in the petition, payable to "Louis Stow, present or order." This warrant was endorsed "Louis Stow," by Fuller & Davis, his attorneys, under the power before mentioned, & made payable to order of the National Bank of the Metropolis. It was next endorsed by the National Bank of the Metropolis to the order of the Treasurer of the United States. On the 9th September, a draft was drawn by the Treasurer in favor of "F. E. Spinner, Treasurer United States, assignee," for the amount of the war-warrant. The defendants then credited this amount to the bank & charged it to the claimant, and the bank at the same time credited to White. But
30 the defendants' law officers having charge of the defence of the action were never informed of the settlement, and the suit was not formally discontinued or dismissed. The claimant, Stow, was not a party to the arrangement with the bank, but he allowed it to proceed without notifying the defendants of his alleged interest or of his objection to the settlement. Pending the settlement, he asserted to Mr. Fuller that he had an interest to the amount of several thousand dollars in the claim, & endeavored to obtain the requisition himself; but this notification & proceeding was entirely between himself and White & between himself and the defendants.

And the Court of Claims, as conclusions of law upon the foregoing findings of fact, decides:

1st. The claimant was the nominal contractor with the defendants, but White was the real party in interest. White might be
31 estopped from taking advantage of his concealed attempt to deal with the defendants, but the defendants are not precluded from going behind the agent & settling with the principal.

2nd. The power of attorney given by the claimant was a sufficient authority to the attorney, Mr. Fuller, to bring this action, and the defendants were at liberty to deal with the claimant's attorney of record pendente lite and settle the suit.

3rd. The claimant, by allowing the suit brought in his name "for the use and benefit" of White to proceed, & by co-operating with White in the prosecution thereof, is estopped from alleging his own adverse interest against a settlement which was made before his adverse interest was disclosed to the defendants.

33 NOTT, *J.*, delivered the opinion of the court:

This is an action brought to recover $32,154.85, being a balance due and unpaid on an account stated by the Third Auditor, approved and certified by the Second Comptroller. The original contract between the parties was for the sale 11,739,864 pounds of pure oats and 11,516,748 pounds of mixed grain; all of which was delivered to Quartermaster Stoddard, at Alexandria, Virginia, in October, November, and December, 1863.

The case presents the curious anomaly of the Treasurer of the United States settling a cause of action pendente lite at one end of the avenue, while the claimant continues to prosecute the action, and the Attorney-General of the United States to defend it, at the other.

The facts stated in the order of their happening are these:

One White was a fraudulent contractor, (as is alleged by the claimant,) and the claimant was his clerk. The defendants having imprisoned White, and having refused to deal with him, the claimant in his own name offered to furnish the grain referred to, and his proposal was accepted. The claimant alone was known to the Quartermaster's Department and the vouchers and drafts were issued to him; but White furnished the grain and received the money, allowing to the claimant a commission for his services and the use of his name.

The defendants having refused to pay the money due on the contract of sale, the claimant, on the 14th of January, 1864, at the request of White, executed a power of attorney in blank authorizing the blank attorney "for me and in my name to collect and receive any and all moneys due and coming due to me," &c., &c., "and to make, execute, and deliver to any officer or person authorized by the said Gov-
33 ernment to pay said moneys a good and sufficient release, acquittal, or receipt for the same, or for any part that may be paid to my said attorneys, and generally to do any and all things necessary in the premises," &c.

This power of attorney was not executed before two witnesses, but was acknowledged before and witnessed by a notary public.

The defendants thereafter paid on the account $154,856.03, which was paid over by the claimant to White, leaving due the balance sought to be recovered now.

White next inserted in the power of attorney the names of "Theodore M. Davis, of New York City, and Thomas J. D. Fuller, of Washington, D. C., as attorney in fact of National Bank of Metropolis, of Washington, D. C., to be my true and lawful attorneys," &c. He then instructed Mr. Fuller, who was an attorney and counsellor at law, to bring an action in this court against the defendants. Mr. Fuller had no authority from the claimant other than the power of attorney. This action was brought, nevertheless, in the name of the claimant.

The petition averred that the suit was brought "for the use and benefit of A. M. White," and recited that it was "White who furnished the grain delivered to the United States in the name of your petitioner."

After the suit was brought, but before the settlement of the cause of action previously alluded to, the claimant twice called on the attorney of record. He requested to see the power of attorney, and his counsel, Mr. Atkinson, informed Mr. Fuller that the claimant "claimed a partial interest in the claim." But the claimant never disclaimed the suit, nor forbade it being prosecuted for the use and benefit of White, and on the contrary allowed it to go on, never pretending more than a partial interest in the cause of action.

The case came on to be heard the 23d April, 1868. The claimant, Stow, had retained Mr. Robert J. Atkinson as counsel, and he appeared and co-operated with the attorney of record. No objection was taken by the claimant or his counsel to the bringing of the action, nor was Mr. Fuller's right to appear questioned. The case went off on a suggestion by the court as to the insufficiency of the evidence, and was continued over the term.

During the vacation following, the cause of action was settled in this way: The National Bank of the Metropolis being indebted to the

34 defendants, and White being indebted to the bank, a war-
warrant was drawn on the 7th September, 1868, on the Treasurer of the United States for the balance of the account, payable to "Louis Stow, present, or order," which was thus indorsed:

"Pay to the order of the National Bank of the Metropolis, Washington, D. C.

"LOUIS STOW,
"By T. J. D. FULLER & THEO. M. DAVIS,
"*As his attorney in fact, and as attorney in fact of the*
"*National Bank of the Metropolis of Washington, D. C.*

"Also the National Bank of the Metropolis of Washington, D. C., by Theo. M. Davis, its attorney in fact, and as attorney of A. M. White, annexed.

"T. J. D. FULLER, *Attorney.*
"THEO. M. DAVIS, *Attorney as aforsaid.*

"Pay to the order of F. E. Spinner, Treasurer United States, for the credit of the National Bank of the Metropolis, Washington, D. C.
"National Bank of the Metropolis of Washington, D. C.,
"By THEO. M. DAVIS, *its Attorney in Fact.*"

On the 9th September a draft was drawn in favor of "F. E. Spinner, Treasurer United States, assignee." The amount thereof was credited to the National Bank of the Metropolis, and charged to Louis Stow by the defendants; by the bank it was credited to White.

At the opening of the December term of this court after the settlement, Mr. Fuller appeared and informed the court that the case had been settled by the parties he represented, and for whom he had brought the suit, and suggested that the cause should be stricken from the docket. On the 7th December, Mr. Atkinson, as counsel for the claimant, procured an order granting leave to amend the petition, "so far as relates to the suggestions contained therein relative to one A. M. White, and his alleged interest therein, and also to conform to the facts as they now stand." The amended petition was then filed, and the case has now come up for hearing thereon. At the first trial the only ques-
tion was as to the sufficiency of the account stated by the Third
35 Auditor and Second Comptroller; at the second, the only question is as to the conclusiveness of the settlement with White. Upon all of these facts we are of the following opinion:

The claimant was the nominal contractor with the defendants, but White was the real party in interest. White might be estopped from taking advantage of his concealed attempt to deal with the defendants, but the defendants are not precluded from going behind the agent and settling with the principal.

The power of attorney, considered as an assignment or transfer of the claim, was void under the act 26th February, 1853, (10 Stat. L., p. 170,) because it was not executed in the presence of "two attesting witnesses after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof." But it was a sufficient authority to Mr. Fuller to bring the action, and the defendants were at liberty to deal with the claimant's attorney pendente lite and settle the suit. The settlement must stand; if any question exist, it is a question between attorney and client.

By allowing this suit, brought for "the use and benefit" of White, to proceed; by his silence to his attorney of record and to the defend-

ants; by his employing counsel to assist in prosecuting it as it originally stood, the claimant is estopped from alleging his own adverse interest against a settlement made before his new position was assumed and his present petition was filed. He virtually stood by and saw the suit settled, and his own act "stoppeth or closeth up his mouth to allege or plead the truth." (Co. Litt., 352 *a*.)

By coming in and filing his amended petition in this the original action, the claimant ratified and adopted all that had been done before. In taking advantage of the suit brought for the use and benefit of another, instead of bringing a suit of his own, he takes it cum onere and subject to all the acts and stipulations of his former attorney.

The judgment of the court is that the petition be dismissed.

36 Court of Claims.

LOUIS STOW
vs.
THE UNITED STATES. } No. 3053.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the amended petition; the findings of fact made by the court; the proposed findings of the claimant with the rulings of the court thereon, and of the opinion of the court in the above-entitled action.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, this 21st day of June, 1873.

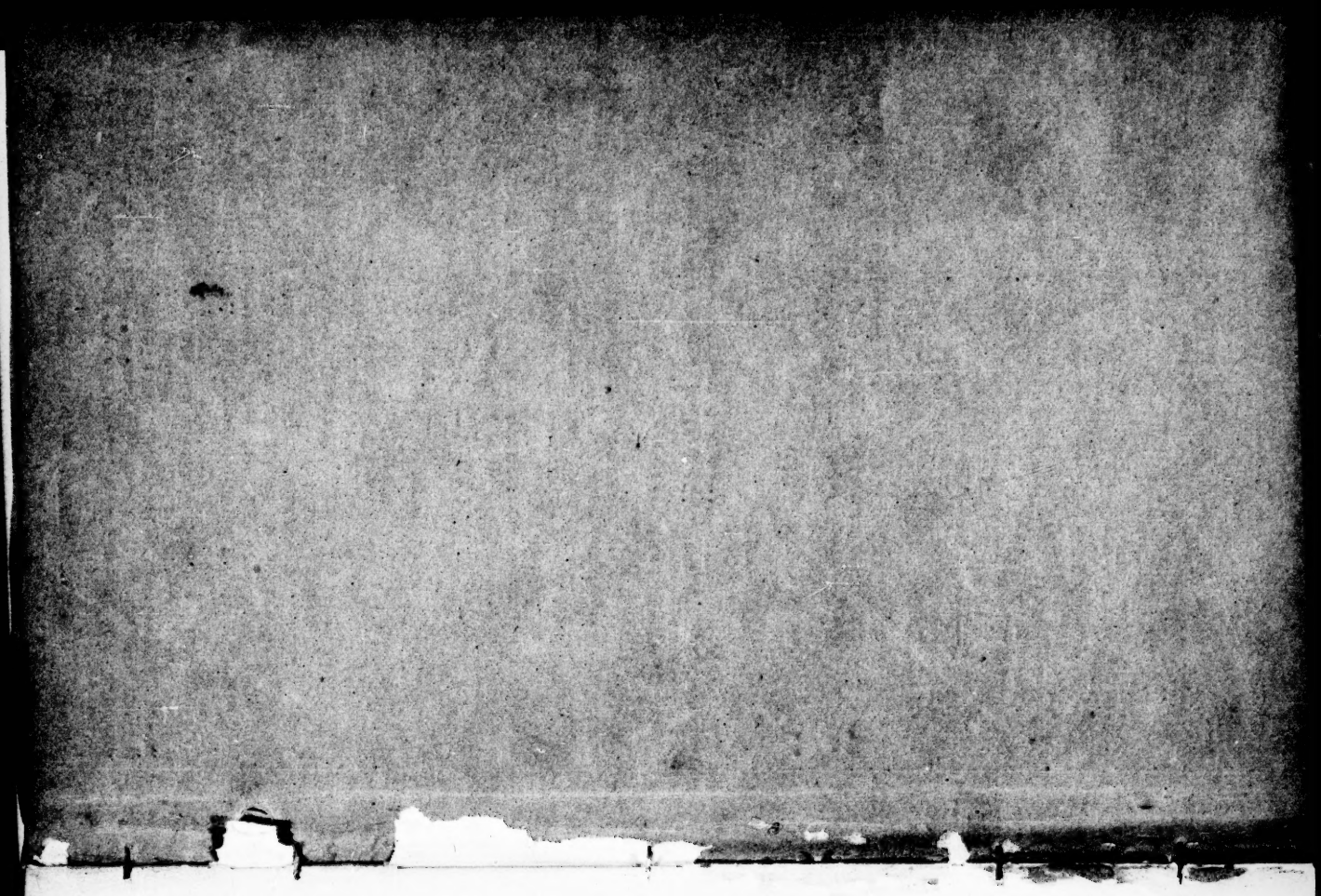
[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

37 It is agreed that this may be filed now with the same effect as if filed when the case was docketed.

25 June, 1873.

JOHN GOFORTH,
Ass't Att'y-Gen'l.
JAMES H. EMBRY.

(Indorsement on cover:) No. 206. Louis Stow, appellant, vs. The United States. Addition to record and agreement of counsel. Court of Claims. Filed 26th June, 1873.



In the Supreme Court of United States.

No. 206.

LEWIS STOWE,

vs.

THE UNITED STATES.

Appeal from the Court of Claims.

The facts material to a proper decision of this case are these, viz: In October, 1863, the proper officers of the United States made a contract with the plaintiff to furnish the United States with a large quantity of horse feed at a stipulated price. This contract was fulfilled by the plaintiff, and the accounting officers of the treasury afterwards, on the 10th of October, 1864, decided that there was due to the plaintiff, the sum of $187,011 88.

On the 14th January, 1864, the plaintiff executed a power of attorney in blank, authorizing blank to receive all money due me on account of the claim. This power was not attested by two witnesses as prescribed by the Act of the 26th Feb., 1853, (10th Stat. L., p. 170,) and was consequently absolutely void.

The proper department, notwithstanding the decision referred to, refused to pay the whole amount so awarded, but did pay to the plaintiff, $154,856.63, leaving a balance due him of $32,154.85, The department, however, afterwards, under the provision of the Act of 30th March, 1868, authorized the payment of such balance, but this was not paid to the plaintiff, although the requisition was in his name alone, but was paid to the persons

whose names were inserted in blank power of attorney, and by an arrangement between them and the attorney of the National Bank of the Metropolis of Washington, the same was applied to the payment of the debt due by A. M. White to that bank, and the Treasury Department credited the bank with the same amount in discharge of a debt due by the bank to the government.

This arrangement was not authorized by the plaintiff, nor had he any knowledge of it till afterwards. The Court of Claims on these and other facts, decided that the plaintiff was precluded from contesting the validity of that arrangement, and upon that ground alone dismissed his petition.

The appeal is from that decision, and the question is, whether the plaintiff is so precluded.

It will not be denied that the power of attorney referred to was for all purposes void.

The language of the Act of 1853, in relation to such powers not attested by two witnesses, is, that they "*shall be absolutely null and void.*"

The only ground, therefore, upon which the judgment of the Court below can be maintained, is because of the manner in which the claim was prosecuted in that Court.

It will be contended on the part of the plaintiff, the appellant, that as the power of attorney was a nullity, the right of the plaintiff to receive the amount in controversy, was vested absolutely in him, and could not be abandoned by the conduct of the counsel who prosecuted the claim under his name and with his authority, so as to deprive the plaintiff of the amount due him. That such conduct was unauthorized, illegal, and against their duty to the plaintiff; that its effect was not to recover the claim, but to defeat it and pay the amount over to another.

REVERDY JOHNSON,
For Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

LEWIS STOWE
vs.
THE UNITED STATES. } No. 206.

BRIEF FOR THE UNITED STATES.

This action was originally brought in the name of Stowe *to the use of A. M. White.* (Rec., 1.) In December, 1868, the petition was amended, amongst other things, by striking out the words italicized above. (Ibid., 8.)

In September, 1868, the action as originally brought had been (substantially) arranged by the payment of the amount claimed to White. (Ibid., 13.)

Stowe knew of the existence of the action in its first shape, and co-operated therein. (Ibid., 13.) He also knew of the ~~assignment~~ arrangement, and made no objection to it. (Ibid., 13.) The grain, the price of which was the subject of the suit, had been bought by White, Stowe giving him the use of his name in the transaction with the Government, and for that and other services being paid by commissions. (Ibid., 12.) The other facts in the case are correctly stated in the brief of the plaintiff in error.

By engrafting his petition (according to its form in December, 1868) upon the suit brought theretofore,

Stowe recognized the authority of the counsel who had brought it. By asking to amend and by taking entire control, he endorsed what had been done up to that date. No amendment could avoid the effect of his having by actual *co-operation* in, or by *ratification* of, the suit as originally framed, induced parties or third persons to *commit* themselves in a manner in which otherwise they would not.

If that action induced the defendants to treat Mr. Fuller as the petitioner's attorney, or to treat Mr. White as the real claimant, and in so treating them they have changed their position, the doctrine of *estopppel in pais* holds him to warrant them from all loss on that account.

The same principle applies to his standing by and seeing the United States settle with White without objection.

The act of 1853, cited by the learned counsel, can hardly be construed so as to enable a creditor of the United States to receive pay *twice* upon the same account, as will be the case here if the facts show that White received the money under a virtual order from the claimant that it should be so paid.

The statute of frauds does not prevent virtual transfers by parol of real estate by *estoppel in pais*, and so the act of 1853 does not prevent its operation in a case otherwise subject to its principles.

GEO. H. WILLIAMS,
Attorney General.

S. F. PHILLIPS,
Solicitor General.